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NO. 83-424

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

JAMES R. PRESLEY,
Petitioner,

v.

GEOPHYSICAL SERVICE, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Respondent believes that this case was properly decided by the Court of Appeals. However, for purposes of opposing any further review of issues addressed in Petitioner's brief, Respondent adopts Petitioner's Questions Presented.

TABLE OF CONTENTS

	Page
Questions Presented	1
Table of Contents	II
Table of Authorities	III
Opinion Below	1
Statement of Jurisdiction	2
Statutes Involved	2
Statement of the Case	3
Summary of Arguments	4
Reasons for Denying Writ	6
I. There Exists No Conflict Between the Various Circuits of the United States Courts of Appeals.	6
II. The Questions Presented in the Instant Petition Do Not Constitute an Important Issue of Law for the Purposes of United States Supreme Court Rule 17.1(c).	6
III. The Issues of Law Presented by Petitioner Should Not be Settled by This Court.	8
IV. The Fifth Circuit Correctly Construed the ORVA.	9
A. The M/V CARRIBEAN SEAL was properly determined to be an oceanographic research vessel for the purposes of the ORVA.	9
B. The ORVA does not Vest the Coast Guard with Authority to Exempt Application of the Jones Act by Regulation.	11
C. The Fifth Circuit Correctly Construed the Statutory Language of the ORVA.	12
D. The Legislative History of the ORVA Supports the Fifth Circuit's Statutory Construction or is Ambivalent on the Matter.	15
Conclusion	20
Certificate of Service	22

TABLE OF AUTHORITIES

CASES	Page
American Construction Co. v. Jacksonville, T. & K.W.R. Co., 148 U.S. 372 (1893)	5
Barrios v. Louisiana Construction Materials Co., 465 F.2d 1157 (5th Cir. 1972)	11
Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980)	12
Director, etc. v. Perini North River Associates, ____U.S. ____, 103 S.Ct. 634 (1983)	16
Griffin v. Oceanic Contractors, Inc., ____U.S.____, 102 S.Ct. 3245, 3250 (1982)	12, 15
Sennett v. Shell Oil Co., 325 F.Supp. 1 (E.D. La. 1971)	4, 6, 8, 19, 20
United States v. American Trading Ass'n, Inc., 310 U.S. 534, 543 (1940)	12, 20
UNITED STATES STATUTES	
28 U.S.C. § 1254(1)	2
33 U.S.C. § 901 *et seq.* [Longshoremen and Harbor Workers' Compensation Act]	15
46 U.S.C.A. § 390	15
46 U.S.C.A. § 441(1)	9, 11
46 U.S.C.A. § 446-446(c) [Sailing School Vessels Act of 1982]	2, 3
46 U.S.C. § 713 [Death on the High Seas Act]	7
FEDERAL REGULATIONS	
46 F. Reg. 56200 (1981) [to be codified at 46 C.F.R. parts 3, 14, 24, 188 and 189]	9
46 C.F.R. 188 [Supchapter U - Oceanographic Vessels]	10
46 C.F.R. 188.05-2	10
46 C.F.R. 188.10-53	10
UNITED STATES SUPREME COURT RULES	
Rule 17.1(c)	6
TEXTS	
1A C.D. Sands, *Statutes and Statutory Construction*, § 22.24 (4th ed. 1972)	13
R. Stern & E. Gressman, *Supreme Court Practice* § 4.19 (5th ed. 1978)	6
MISCELLANEOUS	
H.R. Rep. No. 599, 89 Cong. 1st Sess., *reprinted in* [1965] U.S. Code Cong. & Ad. News 2382 2384	7
H.R. Rep. No. 97-788, 97th Cong. 2d Sess., *reprinted in* 1982 U.S. Code Cong. and Adm. News 3138, 3142	14

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OPINION BELOW

The opinion of the Court of Appeals for the Fifth Circuit has now been reported in 709 F.2d 406 (5th Cir. 1983). Since the reported opinion follows verbatim the Unofficial Opinion printed in Petitioner's Appendix A at pp. A-1 to A-6, Respondent will not include herein a copy of the Official Opinion.

STATEMENT OF JURISDICTION

This case is susceptible to the jurisdiction of this Court, if at all, only under 28 U.S.C. § 1254(1), as indicated in the Petition for Writ of Certiorari.

STATUTES INVOLVED

Respondent adopts the statutes listed by Petitioner, and additionally cites the following relevant statute: 46 U.S.C.A § 446-446(c) [Sailing School Vessels Act of 1982].

> § 446. Sailing school students and sailing school instructors without seamen status under steam-vessel and merchant seamen provisions or maritime law doctrines.
>
> Sailing school students and sailing school instructors shall not be considered to be seamen under the provisions of titles 52 and 53 of the Revised Statutes of the United States and any Act amendatory thereof or supplementary thereto, or for the purposes of the maritime law doctrines of maintenance and cure or warranty of seaworthiness. (Pub. L. 97-322, Title II, § 204, Oct. 15, 1982, 96 Stat. 1589.)
>
> § 446a. Financial responsibility; minimum amount; evidence
>
> Each owner or charterer of a sailing school vessel shall maintain evidence of his or her financial responsibility to meet any liability incurred for death or injury to sailing school students or sailing school instructors on voyages aboard the vessel, in an amount not less than $50,000 for each student or instructor. Such financial responsibility may be evidenced by policies of insurance or other adequate financial resources. (Pub. L. 97-322, Title II, § 205, Oct. 15, 1982, 96 Stat. 1589.)

§ 446b. Sailing school vessel without status of merchant vessel or vessel engaged in trade or commerce under sections 291 and 883 of this title.

For the purposes of section 291 and section 883 of this title, a sailing school vessel shall not be deemed to be a merchant vessel or a vessel engaged in trade or commerce. (Pub. L. 97-322, Title II, § 206, Oct. 15, 1982, 96 Stat. 1590.)

§ 446c. Definitions.

For purposes of sections 672(b)(4), 446, 446a, 446b, and 446d of this title, the term "sailing school students", "sailing school instructor", and "sailing school vessel" have the meaning given such terms in section 390 of this title. (Pub. L. 97-322, Title II, § 207, Oct. 15, 1982, 96 Stat. 1590.)

STATEMENT OF THE CASE

Respondent substantially agrees with the Statement of the Case as presented in the Petition, except to note that Petitioner, although originally hired as a compressor mechanic trainee, had been promoted to compressor mechanic prior to incurring the alleged injuries upon which his suit was based. At all times, from and after his employment by Respondent, he was part of the geophysical "shooting group" on board, the M/V CARRIBEAN SEAL under the direct supervision of the Party Manager.

Respondent also objects to Petitioner's conclusory statement that the CARRIBEAN SEAL was not properly found to be an oceanographic research vessel under the ORVA. The CARRIBEAN SEAL was built specifically for oceanographic research, its entire career was devoted to that research, and it was conducting oceanographic research at the time Petitioner's accident occurred. On

the basis of such evidence presented to District Judge Gibson, both that Court and the Fifth Circuit treated the CARRIBEAN SEAL as an oceanographic research vessel under the ORVA for purposes of decisions rendered in this case.

Finally, Respondent is compelled to correct Petitioner's assertion that the effect of the Fifth Circuit decision below is to "totally [withdraw] seaman's status from 'scientific personnel' on board any vessel engaged in Oceanographic Research." (Petition, p. 6.) As Petitioner well knows, the Appellate decision prevents scientific personnel governed by the ORVA from being considered seamen under the provisions of the Jones Act, 46 U.S.C. § 688, but explicitly retains seaman's status and appropriate remedies for such persons under the general maritime law.

SUMMARY OF ARGUMENTS

It should be noted, and Respondent emphasizes, that the questions presented in this Appeal are not the subject of any conflict between the Circuits. Indeed, aside from this lawsuit, only one case has been published which addresses the issues raised in this Petition. That case, *Sennett v. Shell Oil Co.*, 325 F.Supp. 1 (E.D. La. 1971), was decided by District Judge Alvin B. Rubin, prior to his elevation to the Fifth Circuit Court of Appeals. His reasoning and holding in *Sennett* were specifically approved by the Fifth Circuit in the instant suit.

Additionally, Respondent does not believe that this case merits review on Writ of Certiorari. The questions presented are not of sufficient public importance to warrant being settled by this Court. The Oceanographic Research

Vessel Act ("ORVA") was intended to, and does in fact, affect only a small category of maritime workers aboard special purpose vessels. Proof of its relatively minor impact lies in the fact that, as indicated above, only one published opinion, other than the instant decision, has addressed these issues in the nearly 20 years since the enactment of the ORVA. It is not the general policy of this Court to issue a Writ of Certiorari where there is such a paucity of prior court decisions. This is particularly true where, as here, only one Circuit Court has addressed the issues on appeal.

Even if the Petitioner's Questions Presented were of some public importance, Respondent does not believe that these matters should be addressed by the Supreme Court at this time. They have not been developed at the district court or appellate levels outside the Fifth Circuit. Congress has not had an opportunity to respond legislatively, since this is the first appellate decision of record on the issue of Jones Act coverage under the ORVA. In short, the questions presented should be allowed to "percolate" in other forums to determine if they need settlement by this Court.

Respondent also submits that the decision of the Fifth Circuit interpreted terms of the ORVA which were clear and unambiguous. Having properly decided the issues of the case, there is no need for the *Presley* decision to be reviewed by this Court.

Finally, Respondent respectfully refers this Court to Petitioner's Statement of the Case, wherein it is accurately stated that the instant suit was accepted and docketed by the Fifth Circuit upon an interlocutory appeal. As this Court has stated in *American Construction Co. v. Jacksonville, T. & K.W.R. Co.*, 148 U.S. 372 (1893),

a Writ of Certiorari is not generally granted to settle interlocutory matters. Rather, where the Court of Appeals has remanded a case for further proceedings in a lower court, the usual policy is to await full resolution of the suit before considering the merits of an appeal. *See also,* R. Stern & E. Gressman, *Supreme Court Practice* § 4.19 (5th ed. 1978).

REASONS FOR DENYING WRIT

I. There Exists No Conflict Between the Various Circuits of the United States Courts of Appeal.

As Petitioner recognizes in his own brief, this Fifth Circuit decision is the first appellate judgment to construe the ORVA. The only other published case considering the issue of Jones Act coverage under the ORVA, *Sennett v. Shell Oil Co., supra,* arose from a 1971 District Court opinion, also within the Fifth Circuit. Hence, the questions presented in this Petition are apparently of significance only to a single Circuit, which now has spoken definitively on the matter. Unless and until those issues achieve more widespread significance among the Circuit Courts of the United States, Respondent respectfully suggests that this Court should refrain from granting certiorari.

II. The Questions Presented In The Instant Petition Do Not Constitute An Important Issue of Law For The Purposes of United States Supreme Court Rule 17.1(c).

The Congressional purpose of the ORVA was to recognize, as a matter of law, that oceanographic research ves-

sels and the personnel working aboard them while engaged in specialized scientific work in the marine sciences, must be treated differently than other commercial vessels and their personnel. *See* Purpose of the Bill, H.R. Rep. No. 599, 89 Cong. 1st Sess., *reprinted in* [1965] U.S. Code Cong. & Ad. News 2382, 2384. Hence, the statute affects only a very limited group of vessels and a specialized type of worker. Those persons exempted from Jones Act coverage under the Fifth Circuit's decision are restricted to members of scientific personnel aboard oceanographic research vessels. The largest group of persons so affected are the technical and mechanical groups aboard seismic vessels. Operating crews (i.e., Captain, Mate, engineers, deck seamen, stewards, etc.) are not exempted and retain all of their rights, including Jones Act status.

Hence, the ORVA was intended to, and does in fact, affect only a very small, highly specialized, category of persons working aboard a limited, special purpose type of vessel. As such, the details of its statutory construction do not involve legal issues of any great public importance.

Moreover, this decision does not affect scientific personnel under the ORVA as drastically as Petitioner would have this Court believe. The Fifth Circuit specifically left seaman's general maritime law remedies intact for scientific personnel. Other maritime remedies not restricted to seamen, (e.g., the Death on the High Seas Act, 46 U.S.C. § 713), continue to be available for scientific personnel or their survivors. The sole effect of the *Presley* decision is to exempt members of scientific personnel from seaman status under the Jones Act.

As noted, prior to the instant decision the only published case addressing the question of Jones Act coverage

under the ORVA was *Sennett v. Shell Oil Co., supra.* That case was decided six (6) years after the enactment of the ORVA. Since *Sennett,* it has taken some twelve (12) more years before the issue was raised again in a published case, by the Fifth Circuit in the instant litigation. This relative absence of activity and precedent underscores the fact that the issues presented by Petitioner have not been of any great public importance over the eighteen (18) year history of the ORVA.

III. The Issues of Law Presented by Petitioner Should Not Be Settled by This Court.

Despite the foregoing argument, should this Court find that the issues presented by Petitioner have sufficient public importance to warrant its attention, Respondent nonetheless respectfully maintains that they should not be addressed at this time. It has been the usual practice of the Supreme Court to allow time for the development of case law at the district and appellate levels, especially in circumstances where only two (2) published opinions have been rendered on a given issue. This is particularly true where the published cases are restricted to a single Circuit.

Respondent respectfully submits, therefore, that it would be premature for this Court to accept certiorari on these matters. Because of its unique status in American Constitutional law, suits filed under the Admiralty and Maritime jurisdiction of federal or state courts have traditionally yielded a number of genuine conflicts which were ultimately resolved by the granting of certiorari. That is not the case here.

Respondent also respectfully maintains that matters of legislative intent and statutory construction are often best settled by the legislative body which originally enacted the statute. If Congress is dissatisfied with the interpretation given to the ORVA by courts within the Fifth Circuit, it is initially the responsibility of Congress to clarify the Act accordingly.

IV. The Fifth Circuit Correctly Construed the ORVA.

A. The M/V CARRIBEAN SEAL was properly determined to be an oceanographic research vessel for the purposes of the ORVA.

Petitioner raises as a threshold issue whether the CARRIBEAN SEAL was properly classified as an oceanographic research vessel for the purposes of the ORVA, in accordance with 46 U.S.C.A. § 441(1). Petitioner has consistently raised this question in his briefs at the District Court and Appellate level, only to abandon his position during oral argument.

As Petitioner is well aware, at the time of Mr. Presley's injury there existed no method by which formal inspection and certification of an oceanographic research vessel could be obtained through the Coast Guard in order to comply with the ORVA. Not until December 16, 1981, some sixteen (16) years after the passage of the ORVA, did the Coast Guard promulgate regulations by which such certification could be obtained. *See* 46 F. Reg. 56200 (1981) (to be codified at 46 C.F.R. parts 3, 14, 24, 188 and 189).

Thus, at the time of the incident upon which this suit is based, and up until approximately two (2) years ago,

it was literally impossible for a vessel to be formally inspected and certified as an oceanographic research vessel, there being no procedures available by which the Coast Guard could make such a designation. If Petitioner's position were to be given credence by this Court, it would effectively defeat the entire purpose of the ORVA for the sixteen (16) years prior to the issuance of these regulations, and would allow the Coast Guard's bureaucratic delay to nullify a valid Congressional statute.

Prior to the issuance of these regulations, vessel owners and the courts employed a functional analysis test to determine vessel status for the purposes of the ORVA, based upon its actual and exclusive engagement in oceanographic research. The Petitioner has not, and cannot, cite a single case, published or unpublished, in which formal Coast Guard certification was required prior to the promulgation of these regulations. A requirement of that sort would have been absurd, of course, due to the impossibility of performance.

The functional definition of ORVA status was sanctioned by the Coast Guard at 46 C.F.R. 188 (entitled Subchapter U-Oceanographic Vessels). Such vessels are defined with reference to whether they are *actually engaged* in oceanographic research, and, if so, they are exempted from inspection as specified in 46 C.F.R. § 188.05-2. There has never been any question that the M/V CARRIBEAN SEAL satisfied the functional test by being *"employed* exclusively in . . . oceanographic research . . ." as defined at 46 C.F.R. 188.10-53, and thus it was exempted from inspection and certification when categorized as an oceanographic research vessel under Subchapter U.

It must also be noted that the ORVA does not require the Coast Guard to inspect, certify, or otherwise formally classify an oceanographic research vessel under the ORVA. Rather, the statute requires that the Coast Guard "find" a vessel to be an oceanographic research vessel. 46 U.S.C.A. § 441(1). Prior to issuance of the regulations governing inspection and certification, the Coast Guard "found" a vessel to be an oceanographic research vessel by means of a functional test, i.e. whether the vessel was actually engaged in oceanographic research. Upon such a "finding", the Coast Guard would then classify the vessel under Subchapter U and exempt it from inspection and certification. At the time of Petitioner's accident, the M/V CARRIBEAN SEAL was duly registered with the Coast Guard as an oceanographic research vessel.

B. The ORVA Does Not Vest the Coast Guard With Authority to Exempt Application of the Jones Act by Regulation.

Petitioner argues that § 445 of the ORVA grants the Coast Guard discretion to exempt oceanographic research vessels from the application of the Jones Act. However, it is clear that § 445 only grants the Coast Guard authority to exempt *vessels* from certain regulations. The Jones Act has nothing to do with the regulation of vessels. It affects employer/employee relationships exclusively, regardless of the identity of the vessel owner, the type of vessel, or the regulations applicable to them. *See e.g., Barrios v. Louisiana Construction Materials Co.*, 465 F.2d 1157 (5th Cir. 1972). Thus, Petitioner's ado concerning § 445 proves to be about nothing.

C. The Fifth Circuit Correctly Construed the Statutory Language of the ORVA.

This Court has long held that there is "no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes." *United States v. American Trading Ass'n, Inc.*, 310 U.S. 534, 543 (1940). In its most recent statement of this proposition, this Court has said that where the will of Congress "has been expressed in reasonably plain terms 'that language must ordinarily be regarded as conclusive.'" *Griffin v. Oceanic Contractors, Inc.*, ____U.S.____, 102 S.Ct. 3245, 3250 (1982) (quoting *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 [1980]). The "plain terms" of the ORVA, § 444, state that:

> Scientific personnel on an oceanographic research vessel shall not be considered seamen under the provisions of Title 53 of the Revised Statutes and Act amendatory thereof or supplementary thereto.

In reliance upon the above, the Fifth Circuit held that the Jones Act "amends" historic Title 53 of the Revised Statutes. Title 53 is currently codified in various sections throughout 46 U.S.C., Chapter 18, entitled "Merchant Seamen."[1] Both the Act of 1915 (c. 153, 38 Stat. 1164 [March 4, 1915]) in which the Jones Act was originally formulated, and the Merchant Marine Act of 1920 (c. 250, 41 Stat. 988 [June 5, 1920]) where it is found in

1. Title 53 of the Revised Statutes was comprised of sections 4501 to 4612 of the Revised Statutes and is now contained in sections 542a, 543, 545, 546, 561, 562, 564 to 571, 574 to 578, 591 to 597, 600, 660, 661 to 669, 674 to 679, 682 to 685, 701 to 703, 705 to 707, 709, 710 and 711 to 713 of title 46.

its present form, include provisions which specifically amended provisions of the historic Title 53.[2]

The Fifth Circuit also found that the Jones Act is "supplementary" to Title 53 inasmuch as it pertains to the protection and relief provisions given merchant seamen. Its specific provisions, as well as its overall purpose, supplement the aims and intent of Title 53. A supplementary act is defined as one which supplies a deficiency, adds to, or completes, or extends a prior statute without impairing, changing, or modifying the existing provision. 1A C.D. Sands, Statutes and Statutory Construction, § 22.24 (4th ed. 1972). It is evident beyond argument that the Act of 1915 and/or the Merchant Marine Act of 1920 and/or the specific provision of the Jones Act itself, is supplementary to the provisions of Title 53 in purpose, function, and effect.

It is significant that Congress employed language virtually identical to the ORVA, when it recently enacted the Sailing School Vessels Act of 1982, 46 U.S.C.A. § 446 *et seq.* This legislation exempted sailing school students and sailing school instructors from seaman status under the Jones Act and general maritime law, as follows:

> Sailing school students and sailing school instructors shall not be considered to be seamen under the provisions of Title 52 and Title 53 of the Revised Statutes of the United States and any Act amendatory thereof

2. Despite its colloquial name the Jones Act is not itself an "act." Rather, it was originally passed merely as a provision (§ 20) of the Act of 1915, and amended by the Merchant Marine Act of 1920 at § 33. The ORVA specifies exemption from seaman status under "acts" amendatory to Title 53. Therefore, since both the Act of 1915 and the Merchant Marine Act of 1920 amend Title 53, the Jones Act itself must be considered amendatory as well.

> or supplementary thereto, or for the purposes of the maritime law doctrines of maintenance or cure or warranty of seaworthiness. 46 U.S.C.A. § 446.

As the Fifth Circuit properly noted in *Presley*, the addition of language in the Sailing School Vessels Act concerning general maritime law doctrines indicates that the absence of such language in the ORVA effectively retains general maritime law remedies for scientific personnel. Conversely, since Congress chose similar language to exclude sailing school students and instructors from seaman status under the Jones Act in the subsequent statute, this reaffirms its intent to exclude scientific personnel from Jones Act status in the prior statute.[3]

Examination of the legislative history of the Sailing School Vessels Act leaves no room for doubt that the statutory language was intended to remove "wide-ranging liability for injuries to seamen . . . historically . . . justified on the grounds that seamen are in need of special protection because they are at the mercy of the vessel's master . . ." H.R. Rep. No. 97-788, 97th Cong. 2d Sess., *reprinted in* 1982 U.S. Code Cong. and Adm. News 3138, 3142. A similar intent, then, must likewise be attributed to nearly identical language found in the ORVA.

Since the clear and unambiguous language of the ORVA requires exclusion of scientific personnel from

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3. Although the sailing school statute exempts students and instructors from seaman status under Title 52 of the Revised Statutes as well as Title 53, this distinction is not relevant to the present inquiry concerning Jones Act coverage. Title 52 was concerned exclusively with the regulation of steam vessels, and not, as is the case with Title 53, with the protections afforded merchant seamen. As indicated in Respondent's argument above, the Jones Act requires a relationship of employer/employee and does not affect the regulation of vessels *qua* vessel.

seaman status under the Jones Act, and since this reading is supported by similar language in the subsequent Sailing School Vessel Act, it is the duty of the courts to enforce such an exclusion, and it is the responsibility of Congress to amend the statute if it believes that construction was not intended. As this Court has succinctly stated, "Congress may amend the statute; we may not."[4] *Griffin v. Oceanic Contractors, Inc., supra,* at 3253.

D. The Legislative History of the ORVA Supports the Fifth Circuit's Statutory Construction, or is Ambivalent on the Matter.

Respondent believes that the statutory language of the ORVA is clear and unambiguous, and therefore should be interpreted literally by the courts. In any event, resort to the legislative history of the ORVA is not particularly illuminating as to the specific intent of Congress in enacting the statute. The ORVA is not a statute which, as in the case of the Longshoremen and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq.*, ("LHWCA"), includes in its legislative history an extensive discussion of its intent and purpose. Nor is the ORVA an act where advice from competing interest groups was sought, as

4. Petitioner does not even reference the Sailing School Vessels Act in his brief, which is perhaps understandable given its close similarity in form, purpose and intent to the ORVA. As noted by the lower court, it is undisputed this Act removes the persons covered thereunder from consideration as seamen, both for purposes of the Jones Act and General Maritime Law. As an incidental matter, the Sailing School Vessels Act's specific application only to non-profit institutions, as defined at 46 U.S.C.A. § 390, effectively refutes Petitioner's contention that Congress would not discriminate between public or private operators for the purpose of removing Jones Act coverage from one group and not the other, as would have been the effect of the ORVA as originally considered by the Congress. See Petition, p. 22.

was the case for passage of the LHWCA. Therefore, Petitioner's references to this Court's view of legislative history as expressed in *Director, etc. v. Perini North River Associates,* ____U.S.____, 103 S.Ct. 634 (1983) have little relevance to the interpretation of the ORVA.

At best, the legislative history of the ORVA is ambivalent. Despite Petitioner's contentions to the contrary, it is clear that Congress had in mind at least two distinct purposes in its passage. First, as Petitioner has already noted, the ORVA was intended to eliminate burdensome and inappropriate regulation which had been imposed upon vessels engaged in oceanographic research. But secondly, and of equal importance, the ORVA was intended to exempt from seaman status those personnel aboard such vessels, for whom such status was inappropriate. Virtually every report from each department and agency responding to the Congressional bill reflected this dual purpose.

Thus, to use the examples cited by Petitioner, the general counsel of the Department of Commerce, Robert E. Giles, stated:

> If [scientific personnel] are classified as seamen, they then become subject to the laws applicable to seamen. This presents problems because the regulations applicable to passenger vessels and to seamen are ill suited to the specific requirements of oceanographic research vessels. House Report p. 2385.

Assistant Secretary of the Navy Research & Development, Robert W. Morris, stated:

> On the other hand, if the scientific personnel on a research vessel are classified as members of the crew

> they become seamen and subject to the laws applicable to seamen. Such a classification also results in difficulties. The laws and regulations applicable to seamen are not designed to apply to scientists and technicians who perform duties considerably different from those usually performed by members of a ship's crew. . . .
>
> The bill would also make it clear that scientific personnel aboard an oceanographic research vessel are not to be classified as seamen and subject to the laws applicable to seamen. House Report p. 2387-88.

The Secretary of the Interior, Stuart Udall, explained that:

> . . . if scientific personnel are classed as crew members, they are viewed as seamen and made subject to the laws applicable to seamen. These laws are not designed to apply to scientists and technicians who perform duties considerably different from those usually performed by members of a ship's crew. House Report p. 2386.

The General Counsel of the Treasury, Fred Smith, wrote that:

> If . . . scientific personnel are classified as members of the crew, they then become subject to the laws applicable to seamen which are not appropriate to scientists and technicians who perform duties considerably different from those usually performed by the members of a ship's crew. House Report p. 2390.

Additionally, the Director of the National Science Foundation, Leland J. Hayworth said of scientific personnel that:

> . . . classification as seamen makes them subject to the laws applicable to seamen. Such laws, however, are

not geared to the duties of scientists aboard research vessels. House Report p. 2389.

Hence, it cannot be said, as Petitioner maintains, that the sole intent of Congress in formulating the ORVA was to exempt certain vessels from certain regulations. Congress very clearly also intended to pass a statute which affected the status of scientific personnel aboard such vessels. The legislative history of the Act is replete with such references.

Petitioner's reliance upon the testimony of Comdr. William M. Benkert of the U.S. Coast Guard is also misplaced.[5] Longstanding principles of statutory construction attribute little weight to the testimony of witnesses in committe hearings. This is particularly true where the issue raised for statutory interpretation is not specifically addressed. Indeed, in the context of the dual purpose of the ORVA, it is not surprising that Comdr. Benkert, as a representative of the Coast Guard (whose duties focus exclusively upon vessel regulation), concentrated his testimony on precisely those issues.

Correllatively, while the Coast Guard may well have certain legal responsibilities with regard to vessel regulation, and while the delegation of authority in such matters

5. Even a cursory review of the ORVA's legislative history would serve to place Commander Berkert's testimony in its proper context. Commander Benkert, a leading, effective and colorful spokesman for the Coast Guard before his retirement as Rear Admiral several years ago, is the last person one would expect Petitioner to cite on the grounds he ". . . fully supports Presley's interpretation of the ORVA . . ." (Petition, p. 21). He was, at the time, Assistant Chief of the Merchant Vessel Inspection Division. As such, his interest in the legislation was limited to *section 445* of the statute (id.), which dealt not with personnel or manning, as did *§ 444*, but, rather, with Coast Guard inspection of oceanographic vessels.

may warrant certain weight in the consideration of statutory construction, it cannot similarly be argued that the Coast Guard has any particular expertise in dealing with the issue of seaman's status and seaman's remedies for personal injury. The opinions of the Coast Guard upon such matters, therefore, should not be accorded particular influence over a court's own interpretation of the statutory language.

Finally, it must be recognized that Congress, not the courts, is the best arbiter of the intent of federal statutory language. If the Fifth Circuit has misconstrued the intent of the ORVA by focusing upon the specific terms of the Act, then it is up to Congress, in the first instance, to clarify its intent with appropriate action. Particularly in a case such as this, where the statute has been interpreted in only two published cases throughout its eighteen year history, and only now in an appellate decision, Congress should be afforded the opportunity to correct its own statutory language if it believes that those cases were wrongly decided.

This is emphatically *not* the sort of case, therefore, that should be reviewed at this time by the highest court in the land. Not until other courts have addressed the issues raised by the ORVA, and not until Congress has had an opportunity to reevaluate its own legislative intent, should this Court feel impelled to finally construe the terms of this Act.

Of course, Respondent believes that the silence of other courts and of Congress in the dozen years since *Sennett v. Shell Oil Co., supra,* speaks loudly for the proposition that this decision was correctly decided and that its interpretation of the ORVA accurately represents "legisla-

tive intent". By approving the reasoning and holding of *Sennett* the Fifth Circuit in the instant decision merely reiterates, at the appellate level, the construction of the ORVA which has been the sole standard for many years. Had Congress or other courts disagreed with that construction, they have had ample time to address the issue independently. There is no need at this date for the Supreme Court to settle an issue of statutory construction which had been secure for some years in the only Circuit yet to address the matter.

CONCLUSION

Petitioner seeks review of issues which have been the subject of published opinions only twice since passage of the Oceanographic Research Vessels Act nearly twenty years ago. Moreover, the questions presented for review are hardly of sufficient public importance to warrant the judicial time and effort involved on the part of this Court, as well as the expense which will be incurred by this Respondent. On these bases alone, the Writ should be denied.

Separate and apart from the foregoing, however, Respondent submits that the Fifth Circuit Court of Appeals has correctly construed the meaning and intent of the ORVA in reliance upon the very words ". . . by which the Legislature undertook to give expression to its wishes", cf. *United States v. American Trading Ass'n, Inc., supra.* Congress chose to remove scientific personnel onboard oceanographic research vessels from seaman status within the meaning of historic Title 53 and any of its amendments or supplements. It did so in specific, clear and unambiguous terms, just as it subsequently chose to re-

move sailing school students and sailing instructors from Jones Act status utilizing nearly identical language. This was plainly understood by the Fifth Circuit in deciding the *Presley* decision, as is evident from the opinion below. To hold otherwise would have amounted to an unwarranted change of existing law by judicial fiat. That is what Petitioner seeks to accomplish and that is precisely what this Court should avoid.

For the reasons set forth herein, Respondent respectfully urges this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this 5th day of December, 1983, three (3) true and correct copies of the above and foregoing instrument were forwarded via U.S. Certified Mail, Return Receipt Requested to:

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